

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF COMMERCE**

WEAVER'S COVE ENERGY, LLC,

Appellant,

v.

MASSACHUSETTS OFFICE OF COASTAL
ZONE MANAGEMENT,

Respondent.

MILL RIVER PIPELINE, LLC

Appellant,

v.

MASSACHUSETTS OFFICE OF COASTAL
ZONE MANAGEMENT,

Respondent.

**MOTION OF THE CITY OF FALL RIVER FOR LEAVE TO FILE A SINGLE
AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT**

The City of Fall River, Massachusetts ("Fall River") hereby moves for leave to file a single *amicus curiae* brief opposing the request by the Appellants, Weaver's Cove Energy, LLC ("Weaver's Cove") and Mill River Pipeline, LLC ("Mill River") (collectively, "Appellants") for an override of the objections by the Massachusetts Office of Coastal Zone Management

("MCZM") to the Appellants' Federal Consistency Certifications.¹ The *amicus curiae* brief that Fall River seeks leave to file is submitted together with this motion.

In support of this motion, Fall River states as follows:

1. The Appellants seek an override by the Secretary of Commerce (the "Secretary") of MCZM's objections to each of the Appellants Federal Consistency Certifications. These appeals arise out of the Appellants' proposal to construct and operate a liquefied natural gas ("LNG") terminal, which will be served by two natural gas pipelines, on the Taunton River in Fall River, Massachusetts (the "Project").

2. Fall River has an interest in these appeals because it is the host city for the Project and it has played a significant role throughout the environmental review process associated with the Project. The *amicus curiae* brief supports the position asserted by MCZM, and seeks a denial of the Appellants' request for a Secretarial override of MCZM's objections to the Federal Consistency Certifications of Weaver's Cove and Mill River, respectively.

3. As the National Oceanic and Atmospheric Administration ("NOAA") indicated in its letters denying Fall River's Motions for Leave to Intervene in the captioned matters, "[t]he Secretary has discretion to allow amicus participation in an appeal proceeding and, under certain circumstances, has permitted interested cities and municipalities to participate as such." Letters from Jane C. Luxton to Ralph T. Lepore, III, Oct. 25, 2007, at 4 (citing Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of Millennium Pipeline, L.P. from an Objection by the State of New York, Dec. 12, 2003 (permitting several local municipalities to participate as amici, including the City of New York, the Village of Croton-on-Hudson and the Town of Cortlandt); Decision and Findings by the U.S. Secretary of Commerce in the

¹ On October 25, 2007, the National Oceanic and Atmospheric Administration ("NOAA"), acting on behalf of the Secretary of Commerce (the "Secretary"), denied Fall River's Motions for Leave to Intervene in the consistency appeals filed by Weaver's Cove and Mill River without prejudice to seek leave to file an *amicus curiae* brief.

Consistency Appeal of Amoco Production Company from an Objection by the Division of Governmental Coordination of the State of Alaska, July 20, 1990 (permitting a local municipality and a whaling commission to file briefs)).

4. As the host city for the Project, Fall River has been involved significantly in the federal, state and local environmental review and permitting process relating to the Project since it began. Indeed, it has been the primary public participant throughout this process. In addition to submitting public comments during review of the Project pursuant to the National Environmental Policy Act, the Massachusetts Environmental Policy Act, and MCZM's review of the Federal Consistency Certifications for the Project, among others, Fall River has played an active and substantial role in numerous judicial and administrative proceedings relating to the Project. For example, Fall River was allowed to intervene in the proceedings before the Federal Energy Regulatory Commission ("FERC"), *see Weaver's Cove Energy, LLC and Mill River Pipeline, LLC*, 12 FERC ¶ 61,070, at ¶ 15 (July 15, 2005), the lead federal permitting agency associated with the Project. As well, Fall River has participated in proceedings before the Army Corps of Engineers, the U.S. Coast Guard, and the Massachusetts Department of Environmental Protection, and currently is involved in proceedings before the Court of Appeals for the District of Columbia Circuit, the Rhode Island Administrative Adjudication Division and the Massachusetts Division of Administrative Law Appeals concerning various permits and licenses for the Project.

5. Fall River's substantial interest in the Project also extends to these proceedings because a decision by the Secretary to override MCZM's objections would allow the federal permitting process to proceed.

6. Furthermore, Fall River's *amicus curiae* brief addresses issues germane to the Secretary's consideration of whether the Project is consistent with the objective or purposes of

the Coastal Zone Management Act or necessary in the interests of national security. 15 C.F.R. § 930.121. And, importantly, the *amicus curiae* brief addresses several reasons the Appellants' request for a Secretarial override should be denied beyond those already asserted in MCZM's brief, including, but not limited to the fact that the Appellants are unable to satisfy the conditions set forth in FERC's conditional approval of the Project issued on July 15, 2005 and, therefore, cannot satisfy the statutory grounds for an override.

7. Because any determination of whether the Project satisfies the grounds for an override by the Secretary involves issues common to both appeals, Fall River respectfully requests that it be permitted to file a single *amicus curiae* brief with respect to the captioned matters.

8. This motion is timely as the decisional record for the appeals does not close until March 4, 2008 and, as a result of MCZM's pending Motion to Supplement the Decision Record, the briefing between the principal parties is not yet complete.

Wherefore, Fall River respectfully requests that the Secretary grants its motion for leave to appear as *amicus curiae*.

CITY OF FALL RIVER

By its attorneys,



Ralph T. Lepore, III
Dianne R. Phillips
Elizabeth A. Mulcahy
HOLLAND & KNIGHT LLP
10 St. James Avenue
Boston, MA 02116
(617) 523-2700

February 8, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been sent this 8th day of February, 2008 by First Class Mail to the following:

Bruce F. Kiely
G. Mark Cook
Jessica A. Fore
Baker Botts LLP
The Warner
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400

Joel La Bissonniere
Assistant General Counsel for Ocean Services
National Oceanic and Atmospheric Association
1305 East-West Highway
SSMC-4, Room 61111
Silver Spring, MD 20910

Carol Iancu
Assistant Attorney General, Environmental Protection Division
Massachusetts Attorney General's Office
One Ashburton Place, 18th Floor
Boston, MA 02108

Bruce K. Carlisle
Acting Director, Massachusetts Office of Coastal Zone Management
251 Causeway Street, Suite 800
Boston, MA 02114-2136

Kimberly Bose
Federal Energy Regulatory Commission
Re: FERC Docket No. CP04-36-000
881 1st Street N.E.
Washington, D.C. 20426

Karen Kirk Adams
Chief, Regulatory Branch, U.S. Army Corps of Engineers
696 Virginia Rd.
Concord, MA 01742-2751


Elizabeth A. Mulcahy